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Citation style: Iwanek Jan. (2014). Standardization of modern democracy.
"Studia Politicae Universitatis Silesiensis" (T. 13 (2014), s. 13-24).



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Standardization of modern democracy

Abstract: Democracy is a timeless, abstract, political system that may occur in virtually any cultural space. The civilizational context, being external to particular national democracies, seems of the utmost importance in the process of forming the system in individual states. As a result, the sphere of shared, similar features of democracy is created. By becoming gradually accepted and embedded in societies it resembles products of culture and becomes a standard of modern democracy. As a theoretical tool to describe the external environment of national democracies, the author proposes the notion of transnational democracy, by which he means a precisely-defined collection of standards and constitutional law patterns, as well as processes and political actions of state, judicial and social institutions, and also individual behaviours, that were formed and fixed in a particular cultural space and over a defined period of time. Additionally, it relates to accepted, or at least tolerated, political ideas present in democratic countries of a particular cultural circle. The author points to the possible spheres of comparing national democracies. If such studies are conducted, it will be possible to define common and perpetuated systemic solutions of contemporary democracy, and subsequently, to gauge the degree of democracy in a particular state.

Key words: democracy, transnational democracy, standards of democracy

Democracy is a concept that has accompanied us for centuries. It has also been given an endless amount of definitions, names and descriptions. Although its tradition as a form of government, a type of political system, is not as rich as the concept itself, it has been permanently rooted in the area of the language of science, the language of politics and everyday language, as well as in the area of the value system of the modern European civilization. Together with such concepts as: human, citizen, family, state, society, law, justice and equality, it accompanies us wherever we go. Democracy is also a value in itself. A political value. It is often a criterion of assessment of societies, states, governments, ideas and man. We talk a lot about it in the public

sphere, however, not very often do we present it and define it (describe it) as a value. This does not, however, concern the constant attempts at providing it with a scientific definition. Sometimes the term is also used in a wide variety of ways to achieve ad hoc political objectives. The idealized, albeit diverse, concept of democracy, became an entity in itself, an autonomous being, which was more often than not detached from its rational and empirical character. The ideal model of democracy in the public debate is something which is overused, and depending on political motivation; applied, empirical democracy, as a form of government, is sometimes assessed as either being in line with this ideal or as its negation. Sometimes it is enough to provide political and media debaters with the etymological meaning of the words *demos* and *krateo* ('I govern'). At other times, the discussion also comes down to a simple, mostly political, interpretation: the rule of the majority (which is usually only a certain kind of minority) cannot be subject to restrictions, as this majority, since it is a majority, may do whatever it wishes. "What is needed in this situation," as Stanisław Filipowicz stated, "is brakes, speed bumps and gates. Mechanisms that require patience and attention. Distance is, above all, of the essence."¹ Unlimited, free democracy, which serves the implementation of random political agendas of the people forming a majority at any given moment, can easily transform into a contradiction of democracy. This version of the postulated, desired democracy, can often be heard in the language of the politics of today. This is made all the more easier, as there never existed one ideal of democracy, nor any one of its axiological forms.

Democracy can also be successfully called a myth. The magic formula. *Mythos* — a word, a legend, a fairy tale, has many ambiguous meanings in science. It can be a story codifying beliefs, it can be associated with magic, worship, ritual, a sacred formula, a worldview structure. In sociology it means an irrational, unreasonable imaginings about reality and beliefs, which often carry emotional weight. It also means thinking along the lines of desire. Democracy can successfully be found playing this very role as well. Today it is also part of popular culture. Along with the creation and development of mass media and mass communication, the concept of democracy is included in the basic concepts of mass culture and is becoming the basic concept (along with others) of modern man. It results from depreciation of non-democracy (totalitarianism), regardless of the attempts made to revitalize it. A feature of mass culture is the indiscriminate copying of rare originals. At this point, it is worth taking a look at an excellent evaluation of a certain stance which was described by Umberto Eco. "We are giving you

¹ S. Filipowicz: *Demokracja. O władzy iluzji w królestwie rozumu*. Warszawa 2007, p. 183.

the reproduction so you will no longer feel any need for the original. But for the reproduction to be desired, the original has to be idolized.”² Very often we use the concept of democracy when we are talking about copies, when the original has either been forgotten, or no longer exists.

Democracy as an ideal, a value, like every value, stems in part from a priori assumptions. It also includes substance which is difficult to explain rationally, a set of pre-established beliefs and faith, often of a moral nature. For example, is the belief of the equality of people not as strong as the belief of their inequality? Is one and the other belief not equally rationally explainable? Was not one and the other belief (faith) amongst the cornerstones of the established social systems? Both of these beliefs found and still find a number of followers. A well known opinion of Wilfredo Pareto: “The assertion that men are objectively equal is so absurd that it does not even merit being refuted”³ is only an example.

Also, other values of democracy, regardless of what they are, are subjected to a similar fate. And one cannot escape the fact that in the political space, new ones appear all the time. If, therefore, the axiological part of democracy is mainly the basis of a specific social order, an accepted order, then it seems rather more useful to reflect on the real, empirical democracies of today. Reflections aiming to find those features of empirical democracies, which, as verified by time, are accepted at the specified time in history and in a given sphere of civilization. All the more that the ideological understanding of democracy, to a certain extent, is often not aligned with political practice. This conviction was not conceived in our time. The dispute about whether a given form of government is (was) a democracy, a system which functioned in accordance with the idea of democracy, came up quite often. Let us take the 19th-century belief that direct democracy was supposed to be the only real democracy. A conviction which led to a fairly obvious conclusion: indirect democracy, representative democracy is not a democracy. If today we begin the description (definition) of democracy by bringing up its first feature — free and fair elections — how far are we from that belief. On the other hand, in the 18th century and until the mid-19th century, democracy understood as “mob rule,” was not the most desirable form of governance. Aversion to democracy at a time when the first states with a “modern democracy” started appearing, was nothing unique. Criticism of this form of government can be traced back to ancient times, and amongst its most illustrious opponents was Aristotle (“Agricultural democracy is the best [...]). It is followed by the pastoral democracy, then the urban democracy and the worst of all, extreme of its forms, is one in which everybody participates

² U. Eco: *Semiologia życia codziennego*. Warszawa 1999, p. 29.

³ W. Pareto: *Uczucia i działania*. Warszawa 1994, p. 83.

in governance²⁴). The resistance against democracy among certain political circles of America (including the “fathers of the independence” of the United States) or Europe, should not come as a surprise either. Democracy in its modern frames, borders and substance as we know it, is not, after all, a timeless absolute, but only a typical variety of democracy characteristic of our times. As with any value, democracy also undergoes a gradual change in time and in space. It can be assumed that it appeared and is subject to change in specific historical conditions and it cannot be ruled out that one day it will vanish. After all, there do not exist eternal political systems.

If we agree that the gap between the ideal of democracy and the real way of governance has accompanied political practice and political thought extremely often, we must also agree that the contemporary debate is not something original, though it does not stop for even a moment to be a subject of scientific, political or conceptual, discourse. The discourse at one time attempts to describe political practice, the practice of governance, while at other times it tries to define the objective of democracy, an ideal (desired) social order. Empirical, applied democracy differs from the postulated, desired, democracy. These differences are seen clearly when we contrast rationalized democracy, utilizing experience and concrete, accepted standards of the governments of other states, especially of the governments of states of law, with the political will of the authority, a free authority, in which democracy is seen not as an end in itself, but as an instrument of achieving ad hoc political objectives. There have been numerous heated political arguments about the first and the second understanding of democracy. Rarely, however, outside the circle of specialists has democracy been thoroughly analysed as a rationalized concept.

In the 19th century, the concept of democracy was often combined with the fight for independence, with national aspirations. After all, freedom belongs to the fundamental values of liberal democracy. Ever since democracy has been fading away as a cosmopolitan concept (timeless and extra spatial). By becoming a system of governance, it co-exists with an essential adjective (democracy with adjectives). In the latter case, it is not about defining, but about describing it. It was then that the following dilemma was ultimately resolved: direct democracy or indirect democracy (representative democracy). At the turn of the century and even more after the First World War, the level of empowerment of the people (the nation) grew significantly — by the granting of rights to women (formerly the abolition of property restrictions) — and continuing the electoral law reform. Political parties became a permanent and a more and more important element of democracy — a so-called party democracy began to develop. The principle of the sov-

²⁴ Arystoteles: *Dzieła wszystkie*. Vol. 6. Trans. L. Piotrowicz. Warszawa 2001, p. 174.

ereignty of the collective body, that is the nation, become internalized in the social conscience. The concept of the people was extensively used in the 19th century, unlike in the 20th century, when the term “nation” came to play a leading role in the political nomenclature. A reinterpretation of the concept of the nation was made. It was re-qualified from an ethnical to a political entity (the entire electorate, all those entitled to political rights). It must be noted, however, that such extensive empowerment of the people, today an obvious fact, was achieved at the turn of the 1960s (along with a complete fulfillment of the principle of the universality of the active right to vote). After all, it must not be forgotten that the concept of the people is historically variable. Giovanni Sartori aptly noted that the new reality required a new name. This, in turn, opened the discussion about mass society.⁵ However, he treats the collective more as a form of legal fiction, an abstract entity. Today the people, therefore, is synonymous with the nation, understood in law as a free people, enjoying political rights and other freedoms such as freedom of belief, assembly or public activity. In determining the scope of empowerment, political criteria are not allowed to be used. The idea of universality can be most appropriately characterized negatively as a ban on using group exemptions in the utilization of the active right to vote.

In the 20th century, the parliamentary-cabinet system of government achieved dominance in Europe. Restrictions of the executive branch, characteristic of those times, resulted from the reluctance towards imperial power after the fall of the three empires (Russia, Germany and Austro-Hungary). It cannot, however, escape attention, that a semi-presidential system of government (presidential-parliamentary system) was developing at the same time, which, despite its deceptive name, offers much more power to the executive than American presidentialism.

In the 20th century, the concept of human rights and freedoms began to take shape. From the times of the French Revolution (declaration of human rights) which in that epoch took on less of a practical but more of a theoretical, doctrinal and based on postulates (axioms) meaning, a practice of establishing institutions for the protection of the rights and constitutional guarantees of the individual was slowly being introduced. The concept of rights and freedoms, including the constitutional rights and freedoms, still remains a dynamic, constantly developing concept, idea and system principle. Not only are new laws being created, but older, previously established laws are also being looked into with great attention (such as the right to privacy). We are also looking into ways of protecting the existing laws. This happens when modern democracies and the practice of social life (economic, political, and

⁵ G. Sartori: *Teoria demokracji*. Trans. P. Amsterdamski, D. Grinberg. Warszawa 1994, pp. 42—43.

media in particular) interfere in our (the citizens') everyday life and restrict our privacy.

Institutions of constitutional guarantees have turned out to be equally important. They include not only institutions monitoring the application of law, but also institutions controlling the lawmaking process (constitutional courts). Among the principles of the system, a consolidation can be observed of the important principle of the rule of law and the state of law, which demarcates the boundaries of the political freedom of those in power. Democracy — and this is strongly emphasized — has legal and doctrinal restrictions, and opinions that it should be absolute (unlimited) in nature, are to be treated as criticism of democracy and as a potential threat. Having said this, let us recall what Alexis de Tocqueville said: "I consider unjust and ungodly the maxim that, in matters of government, a majority of the people have the right to impose their will [...]."⁶ We have already indicated that democracy is not an abstract system, and that it is timeless and can appear in every cultural area. It should be noted, however, that as early as at the beginning of the 1990s, beliefs that waves of democratization will lead to the removal of democracy's rival (socialism) were ripe. Thanks to this, democracy was considered as having strong chances of becoming a global system, a dominant form of governance. Democracy has its cultural roots and is dependent on a whole range of conditions, including, of course, ones of a civilizational nature. If we are aware of and mention its particular variations (without assessing whether they were or are legitimate) such as ancient democracy, Athenian democracy, bourgeois democracy, gentry democracy, liberal democracy, modern democracy, only to name a few, we are also expressing a view that there is no general democracy, but only one of its forms.

Among the many ways of specifying and defining democracy, let us now take a closer look at it from two opposing perspectives.⁷ In the first one we see democracy as a group of qualities that refer to the values and objectives which should be achieved through democracy (teleological form). The other perspective, which has been with us since the announcement of Joseph Schumpeter's proposal, involves paying more attention to formal and procedural aspects, in other words, an approach in which it is more important to define the way we govern.

Hans Kelsen stated that democracy is a term which is used at various occasions and depending on the prevailing political fashion. It is the most overused political concept and takes on different, often contradictory meanings. This observation has remained true to this day. Giovanni Sartori points

⁶ A. de Tocqueville: *O demokracji w Ameryce*. Trans. M. Król. Preface by J. Baszkiewicz. Warszawa 1976, p. 183.

⁷ A synthetic take on the theories of democracy is presented by A. Antoszewski in: "Współczesne teorie demokracji." *Studia z teorii polityki*. Vol. 2. Wrocław 1998.

out that before the 1940s, we knew what democracy was. Since then, everybody has liked it, but no one knows what it is. At the same time, however, he writes very categorically: "Democracies exist because we have invented them, because they are in our minds and also while we comprehend to keep them well and alive."⁸ John Locke was a supporter of the axiological approach. He indicated that equality is of paramount importance as all people are equal by nature. Edward Wnuk-Lipiński presents similar views. He clearly implies the necessity of axioms, that is some preliminary, unverified, self-explanatory assumptions. In the theory of democracy, there are at least two such axioms: 1) people are equal, 2) the rule of the majority is better than the rule of the minority. These are questioned by for instance elitist theories: 1) people are not equal, 2) majority rule is impossible, as the elites always rule.⁹ The mentioned Joseph Schumpeter emphasizes the procedural approach to defining democracy: competition and cyclicity, competitive elections, and as a result, the minimizing of the axiological and teleological factor. But he also emphasizes the rights of the opposition, limits of the governments' power, political equality and the protection of civil rights.¹⁰ Robert Dahl is a supporter of the pluralistic concept of democracy – equal opportunity, competition between groups of interest.¹¹ Adam Jamróz, in turn, advocates the standard (canon) of democratic society and the democratic state. He comes to this conclusion taking into account the descriptive method. The principle of sovereignty, freedom and equality of the individual, competition of entities, majority, pluralism and the principle of consensus, are in his opinion the constitutive features of this system.¹²

It seems that a combination of the axiological and formal approach appears to be optimal. The essential features (which, however do not give the entire picture) of this system include: all people have an equal chance to be elected to positions of power, the stance of the majority determines the outcome, the results of the election are determined based on the rules that apply to all, the rule of the majority cannot violate the autonomy of the minorities. For Dahl, democracy is when representatives are chosen and when there exist free and fair elections, universal suffrage, right to stand for elections, freedom of speech, access to information and freedom of association.

At this point it is also worth indicating how the concept of democracy was understood in the social conscience of the Poles. As a result of studies conducted in 1990 and 2000,¹³ freedom was considered as the basic feature

⁸ G. Sartori: *Teoria demokracji...*, p. 34.

⁹ Cf. E. Wnuk-Lipiński: *Demokratyczna rekonstrukcja*. Warszawa 1996, pp. 31–32.

¹⁰ A. Jamróz: *Demokracja*. Białystok 1999, p. 6.

¹¹ For instance in *Polyarchy*. Yale University Press 1971, pp. 74 ff.

¹² A. Jamróz: *Demokracja...*

¹³ Cf. *Język, wartości, polityka*. Ed. J. Bartnicki. Lublin 2006, pp. 72–77.

of this system, followed by equality (these two characteristics were associated with free elections and citizens' participation in governing the state), and then by justice and the rule of law, the rule of the majority, multi-party system, tolerance, cooperation, respect for the individual, autonomy, and the fact that man is the highest good. In the second study, however, appeared another feature: the free market. In addition, democracy was evaluated as a corrupt system and this was associated with the belief that it is a system which should have a connection with ethics or religion. During this decade, certain preference changes took place with regard to the individual features, but the two essential ones, namely freedom and equality, still dominated. Hence, people's understanding of democracy does not deviate substantially from how it is perceived by science.

The above remarks were intended to provide a brief and surely a selective overview of the wide range of approaches and scientific proposals in the description of the democratic system, and were essentially made with one goal in mind. Democracy, although being a certain kind of idea in itself, as an object of research, attracts our attention primarily as a form of governance, as a specific political and legal system, which was always found in different historical eras and in the forms which were typical for its own era (i.e. time and cultural area). Although our times are dominated by national democracies, they have not developed, nor do they operate in isolation or in a vacuum. They interact with each other to form standards for political system structure and practice. Furthermore, globalization processes, including those pertaining to international integration, can lead to the creation of a transnational system.

The context of civilization, which is external for national democracies, has great importance for the evolution of democracy in specific countries. As a result, a common plane of similar features which are characteristic of a democracy, is created. These features, if accepted and preserved, just like cultural products, will successfully fulfill the role of the contemporary standards of democracy. In order to describe the external environment of national democracies, I suggest using the concept of transnational democracy, which I understand to be a specific group of standards, preserved models of legal and constitutional solutions, processes and political behaviour of political (including state institutions), judicial and social institutions, as well as the behaviours of individuals, that have developed and preserved themselves in a defined cultural circle, and at a certain time. It also applies to the accepted or at least tolerated political ideas found in the democratic countries of a certain cultural circle. This is about making certain concepts and categories understood if not identically, then at least similarly or undisputedly. These models have been preserved thanks to long-term practice. Another aspect of this concept is the possibility (a very realistic one within the European Union)

of the development of a transnational system. As such, I do not interpret this concept as a synonym of international democracy, for a democracy of this type, if found, concerns the cooperation and competition between international relations entities, as well as the procedures of international organizations.¹⁴

Determining the substance of the concept of transnational democracy, allows for the formulation of planes on which it would be possible to make a comparison of the solutions which have been adopted and are respected in various national democracies (state democracies), and thus for a description of the standards of European democracy. It will also help determine the level of democracy in the national democracies. Thanks to them, it is possible to make qualitative assessments. The planes of these comparisons could be the subject of research into applied, empirical democracy, which would allow for identifying common, or at least the dominant preserved system solutions. They would constitute the standards of a democratic regime in the European political space and would cover the following areas.

1. The scope and substance of the rights and freedoms of individuals; this is the basic sphere, at least in the conceptual dimension of democracy, which has been developing extremely rapidly especially after the Second World War. The basis of democracy. This is not about referring to catalogues of rights and freedoms which have been agreed upon and adopted by international conventions, but about comparing the constitutional mechanisms and political practice in mature democracies in Europe. This is an extremely controversial sphere, as it is associated with issues of human philosophy, religion, traditions as well as the ethnic, national and racial structure of societies. Also, the public debate on these issues is often lively and emotional. Out of necessity, let us illustrate it with a few examples. The death penalty no longer stirs much emotion these days. The penalization of homosexuality, which was in force only few decades ago, has also been forgotten. Although the debate on the legalization of torture in the fight against terrorism has quieted down, the issue of the defense against terrorism is still open, as in the legal possibility to shoot down civilian aircraft (leading to the death of innocent people). The scope of protection of life (abortion and euthanasia), the range of the rights of sexual minorities or the constantly expanding widespread surveillance of citizens, still remain open issues.
2. Protection of human rights and freedoms, including the scope of the institutional protection of constitutional guarantees. Paradoxically, the rights and freedoms of individuals in contemporary democracies are particularly vulnerable. This are prone to different kinds of threats than in the past.

¹⁴ Cf. J. Iwanek: "Demokracja transnarodowa a demokracja narodowa." In: *Parlament Europejski w budowaniu społeczeństwa obywatelskiego*. Ed. J.A. Haber. Chorzów 2008, p. 22.

The contemporary citizen is subject to ever-greater regulation by the state. The greatest hazards can be found in the virtual space, a reality which is regulated by law in the slightest. We are also observing an increase in the powers of the state authorities in the surveillance of its citizens. These are undoubtedly new challenges society is made to face. The national systems of protection seem too little effective. Therefore, quasi- and extra-judicial institutions of protection are gaining ground.

3. Freedom of conscience and freedom of the media, including the actual (positive and negative) impact of the media on the functioning of the democratic system. The so-called fourth power, which remains uncontrolled in democracies, is the first power of the state in the opinion of many.
4. The scope of economic freedoms, including the scope of state control over the economy.
5. The objective and subjective scope of active election rights; full universality of the right to vote (by which I mean the prohibition of making group exclusions in the use of active suffrage) has been with us for 40 years, however, for some time, the new age limit of 16 years is being experimented upon. Furthermore, the election rights of people permanently living abroad, as well as EU citizens living within the territory of the Member States still remains an open issue.
6. The scope of the necessary exemptions in the passive electoral law; this is not only about varying the age limit, but also the scope of *incompatibilitas*.
7. The substance and the functioning of the principle of separation of powers; although there is no state in which the principle of the separation of powers would be fully applied, the differences between the democratic countries in this field are considerable. Given the importance of the principle of separation of powers, both in horizontal and vertical terms, it is fully justified to define a standard (a mean) in this respect.¹⁵
8. Mechanisms and control of the lawmaking process, including the role of constitutional courts and common courts of law; of particular interest is the issue of the so-called decree legislation, both in terms of the legal conditions of its application and practice. The differences between European democracies in this respect are considerable.
9. The quality of legislation and the rule of law in practice, including system pathology phenomena, the extent of corruption; these are without doubt issues allowing for a determination of the level of democracy, as well as the quality of the life of the citizens.

¹⁵ More on the subject in J. Iwanek: "Wspólnota autonomiczna w ustroju polityczno-prawnym Hiszpanii." In: *Państwo i prawo wobec współczesnych wyzwań, księga jubileuszowa profesora Jerzego Jaskierni*. Vol. 2. Eds. R.M. Czarny, K. Spryszak. Toruń 2012, pp. 232—233.

10. State repression; this, in particular concerns a comparison of the scope of the criminalization of the same acts and the degree of repression for the same offences in the context of the creation of a European standard for the rights and freedoms of individuals (this does not only concern an international, legal standard).
11. Aggression in politics and the level of public debate; this remains in connection with the means of resolving actual and apparent tensions and social conflicts, and thus makes it possible to evaluate the status of democratic standards in the public consciousness.
12. Ideological pluralism and its scope; European democracies differ in this area both with regard to the legal framework (e.g. banning the proclamation of certain ideas or public religious expression); this is also about extracting the dominant ideologies of 21st-century Europe. This issue remains important not only in the context of a certain group of ideas established in the rather distant past, but also concerns the revitalization of nationalist ideas.
13. The dominant social ideas and ideological divisions; this plane is basically an extension of the previous one.
14. Types of political leadership and the shape of political culture.
15. The law on political parties; although freedom of creation and functioning of political parties is an undisputed and proven solution in modern democracies, a few issues remain open, such as party funding from the state budget, favouring parties with parliamentary representation, equal-unequal access to public media, participation in the “post-election bounty,” the discrepancy between the legal and political concept of a political party, resulting in an unclear legal situation within regional and local authority institutions.
16. The political activity of citizens and the functioning of civil society; this, in particular, concerns the importance of turnout, as well as the use of institutions of direct democracy.
17. Attitude towards the idea of international integration.
18. The scope of the sovereignty of the state in the context of European integration.
19. Decentralization of the state; although decentralization is widely recognized and can be defined as a constitutive feature of modern democracy, a comparison of the regimes at the regional level, as well as the unique constitutional stability and competence of local government, presents considerable variation.

This list most probably does not end here. It was necessary to present a chosen few examples. The dynamics of political and system practice will lead to the emergence of even more areas of comparison. There is no doubt that the development process of standards is possible only in an area with

a high degree of international integration (economic, political and cultural). The European Union creates such conditions on a scale unparalleled elsewhere. Also, it is a pioneer in this respect. I have deliberately omitted such issues as divisions between a constitutional monarchy and a republic, or between a federal union and a unitary state. These are undoubtedly interesting research areas, but in my opinion are not relevant to the scope of the standardization of democracy.

The second aspect of the concept of transnational democracy is the developing plane of the European system. It relates mainly to the various unification processes taking place in many areas. This is not only just about the benefits offered by the EU (citizenship, liberty and freedom, law, judiciary and others), but also about the stimulated phenomena of cultural diffusion. After all, political institutions and political ideas are cultural creations which are exchanged. This process enhances the formation of transnational ideas, which are direly needed in light of the ideas formed in the 18th, 19th and the first half of the 20th century, that is ideas that still dominate over us, but more and more frequently fail to address the challenges of the 21st century. Changes in public awareness, shaping of patterns of political leadership, unification of political institutions, as well as sensitivity to human rights and freedoms, are the possible effects which can be achieved in the long run. Integration processes and the development of civilization in general, provide further opportunities for the creation of electronic democracy (a new form of direct democracy), which is, by its very nature, competitive in relation to representative democracy.